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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/500,724  | 11/29/2004  | Per Gramme           | 2004-0859A          | 6707             |
| 513   | 7590        | 10/22/2007           | EXAMINER            |                  |
| WENDEROTH, LIND & PONACK, L.L.P.<br>2033 K STREET N. W.<br>SUITE 800<br>WASHINGTON, DC 20006-1021 |             |                      | TURNER, SONJI LUCAS |                  |
| ART UNIT  |             | PAPER NUMBER         |                     |                  |
|   |             | 1797                 |                     |                  |
| MAIL DATE   |             | DELIVERY MODE        |                     |                  |
| 10/22/2007  |             | PAPER                |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

|                          |                  |                             |
|--------------------------|------------------|-----------------------------|
| Application No.          | 10/500,724       | Applicant(s)<br>GRAMME, PER |
| Examiner<br>Sonji Turner | Art Unit<br>1797 |                             |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 October 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires 3 months from the mailing date of the final rejection.  
 b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a)  They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b)  They raise the issue of new matter (see NOTE below);  
 (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 16-19

Claim(s) objected to: 13-15, 20

Claim(s) rejected: 13-15, 20

Claim(s) withdrawn from consideration: 21-25

**AFFIDAVIT OR OTHER EVIDENCE**

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13.  Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because: Regarding the preamble of claim 13, the phrase "for transforming a dispersed liquid/gas flow into a stratified flow" indicates intended use, and in the body of claim 13 the phrase "so that the flow pattern of the gas/liquid in the . . ." also indicated intended use for the means plus function stated as "a mechanism for stopping the rotation of the gas." Intended use has been continuously held not to be germane to determining the patentability of the apparatus, In re In re Finsterwalder, 168 USPQ 530 (CCPA 1971). Purpose to which apparatus is to be put and expression relating apparatus to contents thereof during intended operation are not significant in determining patentability of an apparatus claim, Ex parte Thibault, 164 USPQ 666 (PTO Board of Appeals 1969). Inclusion of the material worked upon by a structure being claimed does not impart patentability to the claims, In re Otto et al., 136 USPQ 458 (CCPA 1963). A recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the structural limitations of that claimed, Ex parte Masham, 2 USPQ 2d 1647 (PTO Board of Appeals 1987). The structure for the instant claim is supported in Griffen. Additionally, the apparatus in Griffen receives a fluid flow consisting of "a dust or particle laden air or gas" where the gas can be air and the particle can be a liquid (col. 1, l. 37). Additionally, Griffen does not teach away from this interpretation. Regarding remarks relating to Capuano, the instant invention does not include language in the claim to limit the invention to a horizontal pipe. Capuano teaches the structural limitations as stated in the instant claims. Regarding remarks relating to Merle, the reference teaches the structural limitations of the instant claim.

DUANE SMITH  
PRIMARY EXAMINER

  
10-19-07